FILED ON: 1/14/2009

SENATE

. No. 1612

The Commonwealth of Massachusetts

PRESENTED BY:

Sonia Chang-Díaz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act protecting homeowners facing foreclosure.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Sonia Chang-Díaz	Second Suffolk
Bruce E. Tarr	First Essex and Middlesex
Stephen L. DiNatale	3rd Worcester
Denise Provost	27th Middlesex
Elizabeth A. Malia	11th Suffolk
Thomas M. McGee	Third Essex and Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION SEE SENATE, NO. S02200 OF 2007-2008.]

The Commonwealth of Massachusetts

AN ACT PROTECTING HOMEOWNERS FACING FORECLOSURE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- SECTION 1. The General Laws, as appearing in the 2000 Official Edition, are hereby
- 2 amended by inserting after Chapter 244 the following chapter: -

3 CHAPTER 244A.

- 4 PROCEDURAL PROTECTIONS FOR HOMEOWNERS FACING FORECLOSURE
- 5 Section 1. As used in this chapter the following words shall have the following meanings:
- 6 "Residential mortgage", an obligation to pay a sum of money, evidenced by a security document
- 7 and secured by a lien on real property located within the commonwealth, containing four or
- 8 fewer residential units and shall include such an obligation on a residential condominium unit.
- 9 No mortgage shall be a residential mortgage within the

- meaning of this chapter, unless one or more residential units at the property securing the loan is
- occupied by the residential mortgage debtor as of two weeks prior to the date of the notice sent
- 13 pursuant to section two.
- 14 "Residential mortgage lender", any person or other entity who lends money or extends or grants
- credit and obtains a residential mortgage to assure payment of the debt. The term shall also
- include the holder at any time of a residential mortgage obligation.
- 17 "Residential mortgage debtor", a borrower who is obligated to a residential mortgage lender to
- 18 repay in whole or in part a residential mortgage, and a successor owner of record.
- 19 Section 2. A residential mortgage lender or its agent shall give the residential mortgage debtor
- 20 notice of its intention to begin foreclosure proceedings. Failure to provide such notice shall allow
- 21 for a cause of action to restrain a pending foreclosure and for damages and equitable relief, if
- 22 applicable, following foreclosure.
- 23 Such notice shall be in writing, sent to the residential mortgage debtor by registered or certified
- 24 mail and by regular first class mail to his last known address and, if different, to the residence
- 25 which is the subject of the residential mortgage.
- 26 Such notice shall clearly and conspicuously state in plain and simple English:
- 27 (1) Facts sufficient to identify the mortgage and the parties thereto, including but not limited to,
- 28 the name of the present holder of the mortgage, the original mortgagee, the lender which intends
- 29 to foreclose, any servicer or agent acting on his behalf, and the name, address, and working

- 30 telephone number of the entity responsible for responding to inquiries by the residential
- 31 mortgage debtor;
- 32 (2) The nature of the default claimed;
- 33 (3) The right of the residential mortgage debtor to cure the default as provided in section three,
- and what performance, including what sum of money, if any, must be tendered to cure the
- default; provided, however, that in making such statement the lender may advise the debtor that
- the amounts stated are based on the information contained in the lender's records on the date of
- 37 the notice, the amounts stated do not reflect items not posted, and adjustments, disbursements, or
- transactions not reflected in the lender's records at the time of the notice or occurring subsequent
- 39 to the date of the notice;
- 40 (4) That the residential mortgage debtor may contact the entity identified in clause (1) for current
- 41 information concerning what performance must be tendered to cure the default in accordance
- with the relevant provisions of this chapter;
- 43 (5) That the residential mortgage debtor may cure the default within sixty days of the date of the
- 44 notice, pursuant to the provisions of section four, without incurring any obligation for the
- 45 residential mortgage lender's attorney's fees or costs;
- 46 (6) That if the default is not cured within sixty days, the residential mortgage debtor may become
- obligated for the residential mortgage lender's reasonable attorney's fees and costs;
- 48 (7) The means by which the residential mortgage lender intends to foreclose, if the default is not
- 49 cured, together with a reasonable estimate of the date on which such foreclosure might occur;

50 (8) That the residential mortgage debtor may be evicted from the property following the 51 foreclosure sale; (9) That the residential mortgage debtor has the following rights: 52 53 (a) to bring an action in court to seek to prevent or delay the foreclosure sale; 54 (b) to sell the property prior to the foreclosure sale and to use the proceeds to pay off the loan; (c) to redeem the property by paying the total amount due, prior to the foreclosure sale; 55 (d) to approach the residential mortgage lender prior to the foreclosure sale to seek a negotiated 56 57 agreement to repay the mortgage on terms that are different from or alternative to the original 58 terms of the mortgage including, but not limited to, copies of the mortgage, note, disclosure 59 statement, and payment records; 60 (10) That the residential mortgage debtor may have the following additional rights, depending on 61 the terms of the residential mortgage: (a) to transfer the property to a third party subject to the security interest held by the residential 62 mortgage lender and the transferee's right, if any, to cure the default; 63 (b) to refinance the obligation by obtaining a loan which would fully repay the residential 64 65 mortgage debtor; and (c) to voluntarily grant a deed to the residential mortgage lender in lieu of foreclosure. 66

- 67 The residential mortgage lender shall respond in writing to any request for documents made
- pursuant to this section within ten business days.
- 69 The commissioner of banking shall promulgate a form notice which meets the requirements of
- 70 this section. Use of such a form notice, if it does not contain materially inaccurate information,
- shall constitute compliance with this section.
- 72 The notice shall contain the following declaration on the first page in Spanish, in any other
- language which the lender knows is the debtor's primary language, and any other language
- deemed appropriate by the commissioner of banking: "This is an important notice concerning
- your right to live in your home. Have it translated at once."
- Section 3. Notwithstanding the provisions of any other law to the contrary, at any time up to one
- business day prior to the scheduled or actual time of bidding at a sale to foreclose a residential
- 78 mortgage, the residential mortgage debtor or anyone acting on his behalf may cure the default,
- 79 prevent foreclosure, and avoid acceleration by paying the mortgage lender all sums which would
- 80 then be due under the residential mortgage if no acceleration had occurred; curing any default of
- any other covenant or agreement of which the residential mortgage debtor had notice pursuant to
- section two; paying all expenses incurred in enforcing the residential mortgage as provided in
- 83 section four: and performing any non-monetary obligations required under the residential
- 84 mortgage. Payment shall not be refused if it is in the form of a cashier's check, certified check,
- 85 treasurer's check, money order, or cash.
- 86 Cure of a default pursuant to this section shall restore the residential mortgage debtor to the same
- position as if the default had not occurred.

Section 4. If a residential mortgage contract provides for the payment of attorney's fees and costs in the event of a default, such fees and costs shall be reasonable and shall not be charged as a percentage of the amounts due under the mortgage. No residential mortgage lender may charge attorney's fees or costs for legal expenses incurred prior to the expiration of the sixty day period provided in section two, if the residential mortgage debtor cures the default within such sixty day period.

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- Section 5. Within ten days following the foreclosure sale, the residential mortgage lender shall provide to the residential mortgage debtor a notice, which clearly and conspicuously states the
- Within ten days of the filing or recording of the foreclosure deed, the residential mortgage lender shall provide to the residential mortgage debtor a notice, which clearly and conspicuously states:
- 99 (1) The date, time, and nature of the foreclosure sale and the name of the purchaser;

highest bid price and the identity of the highest bidder.

- 100 (2) The amount of money, if any, received by the residential mortgage lender following the 101 foreclosure;
- (3) The distribution of the proceeds of sale with an accounting of any costs or fees associated
 with the sale, together with a statement of the residential mortgage debtor's right to claim against
 or dispute the proposed distribution;
- (4) The right of the debtor to obtain copies of documents related to the sale or disposition,
 including, but not limited to copies of the record of sale or disposition, title records, and an

accounting of the residential mortgage lender's claim, together with a description of how those records may be obtained; and

- (5) The name, address, and telephone number of the entity to which inquiries, requests for record or disputes concerning disposition of the proceeds of sale may be addressed.
- Each notice shall be in writing, sent to the residential mortgage debtor by registered or certified mail and by regular first class mail to his last known address and, if different, to the residence which is the subject of the residential mortgage.
 - The commissioner of banking shall promulgate a form notice which meets the requirements of this section. Use of such a form notice, if it does not contain materially inaccurate information, shall constitute compliance with this section.
 - The notice shall contain the following declaration on the first page in Spanish, in any other language which the lender knows is the debtor's primary language, and any other language deemed appropriate by the commissioner of banking: "This is an important notice concerning your right to live in your home. Have it translated at once."
 - Section 6. No foreclosure subject to the provisions of this chapter shall take place within one hundred and eighty days of the sending of the notice required by section two, absent a court order. The superior court shall have jurisdiction to issue any such order following reasonable notice to the residential mortgage debtor and opportunity to be heard. Such order shall issue upon a showing of clear and convincing evidence by the residential mortgage lender that justice requires it and after notice to the residential mortgage debtor and a full evidentiary hearing.

Section 7. In addition to any other remedies provided in this chapter, failure of a residential mortgage lender to comply with any provision of this chapter shall allow for a cause of action for total damages under section nine of chapter ninety-three A of not less than five hundred dollars.

Section 8. The amount of judgment for a deficiency brought under the provisions of section seventeen A of chapter two hundred and forty-four on a residential mortgage shall be the debt plus any liens senior to the foreclosing mortgagee's interest less the higher of either the sale price at the foreclosure or the fair market value of the property at the time of the foreclosure. The price obtained at the foreclosure sale may be admitted as evidence of the fair market value; provided, however, that such sale price shall not be conclusive evidence of the fair market value; and provided further that the court shall make an independent determination of fair market value based on all the evidence.

Section 9. Upon foreclosure of a residential mortgage, which is sold or otherwise acquired by the residential mortgage lender, its agents, assigns, or any entity other than a bona fide third party purchaser for value, the entity or person acquiring the mortgage shall be required to account to the residential mortgage debtor for any proceeds of a resale which takes place within the eighteen months following the original sale or disposition.

Any entity or person with an obligation under this section:

(1) may retain all sums advanced to acquire the property from the proceeds of the resale, plus any sums reasonably expended to maintain, repair, or improve the property, plus twenty-five percent of the balance of the proceeds. Any surplus proceeds must be returned to the residential mortgage debtor;

148 (2) must make reasonable efforts to locate any person entitled to a refund under this section, including, but not limited to mailing to that person's last known address and a check of telephone 149 listing in the community where the debtor last lived; 150 151 (3) shall provide notice to the commissioner of banking of any refunds under this section which 152 remain unpaid for more than ninety days. 153 The commissioner of banking shall maintain any records of unpaid refunds under this section by the name of the person or persons entitled to the refund for at least two years following notice of 154 155 the unpaid refund. The commissioner of banking shall publish, at least two times yearly, the 156 names of those persons entitled to refunds. 157 Section 10. The provisions of this chapter shall not be waived, and any agreement to waive them

or covenant not to rely upon them shall be void.

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